

REMARKS/ARGUMENTS

The Objection to the Specification Should Be Withdrawn

The specification has been objected to for having embedded hyperlinks and/or other form of browser-executable code on pages 29, 38, and 44.

The specification has been amended to delete the embedded hyperlinks and/or other form of browser-executable code. Where appropriate, Applicants have further amended the specification on each of these pages to insert a citation to a journal article or the name of the linked program in replacement of the embedded hyperlink and/or other form of browser-executable code. Each of the cited journal articles can be found at a linked website and describes the program that was disclosed in Applicants' original specification. Accordingly, these amendments to the specification do not introduce new matter.

In addition to the above amendments to the specification, Applicants have amended the specification to insert a missing indefinite article (--a--) in last sentence of the first paragraph that begins on page 29 of the specification. This amendment to the specification is purely formal in nature and thus, does not introduce new matter.

In view of the amendments to the specification and the above remarks, Applicants submit that the objection to the specification should be withdrawn.

Status of the claims

Claims 1-8 and 12-17 stand rejected, and claims 9-11 and 18-33 are withdrawn.

Applicants have amended claims 1, 7, 8, 15, 16, 25, 29, and 30.

In the interest of expediting examination of the instant application and not to limit the scope of their claimed invention, Applicants have amended claim 1 to incorporate a recitation from claim 6, now cancelled. In particular, Applicants have amended claim 1 to replace in part (i) the recitation “being derived from a plus-sense single stranded RNA virus” with --contains components of an RNA replicon--. This amendment is fully supported by Applicants’ original specification and original claim 6.

Applicants have amended each of claims 7 and 8 to change claim dependency from claim 6 to claim 1. These amendments to claims 7 and 8 were necessitated by the cancellation of claim 6, which depends from claim 1. Accordingly, these amendments are purely formal in nature and do not introduce new matter.

Applicants have amended each of claim 15 to delete the recitation of “preferably a *Solanacea* plant, more preferably a *Nicotiana* plant, most preferably tobacco” therein in response to a rejection of claim 15 under 35 U.S.C. § 112, second paragraph, as discussed below.

Applicants have amended claim 16 to delete the recitation of “or said helper replicon (ii)” in response to a rejection of claim 16 under 35 U.S.C. § 112, second paragraph, as discussed below.

Applicants have amended withdrawn claim 29 in the same manner as claim 15 was amended to delete the recitation of “preferably a *Solanacea* plant, more preferably a *Nicotiana* plant, most preferably tobacco”.

Applicants have also amended withdrawn claims 25 and 30 in the same manner as claim 1 was amended as described above. As amended each of these claims recites that the RNA replicon of part (i) contains components of a tobamovirus. Support for these amendments can be found in the original specification and original claim 6.

Applicants have cancelled claims 9-11 without prejudice or disclaimer for being directed to non-elected subject matter. Applicants expressly reserve the right to file one or more

divisional applications or take such other measures deemed necessary to protect the subject matter encompassed by these claims.

New claim 34 has been added. This new claim finds support in Applicants' original specification and is based on original claim 24.

The amendments to the claims are fully supported by Applicants' original specification and claims. Therefore, no new matter has been added by way of the amendment of the claims or by the addition of the new claim.

Claims 1-5, 7, 8, and 12-34 are pending. Claims 1-5, 7, 8, 12-17, and 34 are under examination. Claims 18-33 are withdrawn.

Reexamination and reconsideration of the application as amended are respectfully requested in view of the following remarks.

The Rejection of the Claims Under 35 U.S.C. § 112, Second Paragraph, Should Be Withdrawn

Claims 15-17 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regards as their invention. Claims 15 and 16 have been amended. This rejection is respectfully traversed.

The Office Action indicates that claim 15 is indefinite due to the recitation of "preferably a *Solanacea* plant, more preferably a *Nicotiana* plant, most preferably tobacco" therein. Applicants have amended claim 15 to delete this recitation. As amended, claim 15 is not indefinite.

The Office Action indicates that the metes and bounds of claim 16 are not clear because the helper replicon as set forth in claim 1 is incapable of systemic movement. Applicants have

amended claim 16 to delete the recitation of “or said helper replicon (ii)” from the claim. As amended, claim 16 is not unclear.

Although not stated in the Office Action, Applicants assume that claim 17 has been rejected under 35 U.S.C. § 112, second paragraph, because it depends from claim 16, which has been rejected under 35 U.S.C. § 112, second paragraph. If Applicants’ assumption is incorrect, Applicants respectfully request that the Examiner state with particularity in the next non-final Office Action the basis for the rejection of claim 17 under 35 U.S.C. § 112, second paragraph, so as to afford Applicants with an initial opportunity to respond this rejection.

In view of the amendments and remarks, the rejections of claims 15-17 under 35 U.S.C. § 112, second paragraph, should be withdrawn and not applied to the newly submitted claim.

The Rejection of the Claims Under 35 U.S.C. § 103(a) Should Be Withdrawn

Claims 1-8 and 12-15 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Lough *et al.* (Virology, 2001, 288:18-28) in view of Ainley *et al.* (U.S. Patent No. 6,384,207).

The Office Action alleges that it would have been obvious to a person having ordinary skill in the art to modify the vector of Lough *et al.* by inserting intron 1 from maize ADH gene into the GFP marker gene as taught by Ainley *et al.* resulting in the instant invention and that this skilled person would have been motivated to do so given the teaching of Ainley *et al.* that such modification would enhance expression of the marker gene.

The Office Action recognizes that the combined teachings Lough *et al.* and Ainley *et al.* do not teach an RNA replicon being a tobamovirus but indicates, however, that claims 6-8 read on any RNA virus give the broad interpretation of “said RNA replicon is based on a tobamovirus.”

Without acquiescing to the position of the Office, Applicants have amended the claims to expedite examination of the instant application and not to limit the scope of their claimed invention. Applicants have amended claim 1 to a form that the Examiner has acknowledged is not obvious in view of the combination of Lough *et al.* and Ainley *et al.* In particular, Applicants have amended claim 1 to recite that the RNA replicon of part (i) contains components of a tobamovirus. The recitation, “containing components of a tobamovirus”, is derived from claim 6, now cancelled.

In view of the amendments and remarks, it is submitted that the rejections of the claims under 35 U.S.C. § 103(a) should be withdrawn and not applied to the newly submitted claim.

Request for Rejoinder of the Withdrawn Claims

In the event that the Examiner determines the amendments made herein place all of the claims under examination in an allowable form, Applicants respectfully request that the Examiner rejoin the withdrawn claims and to examine and allow these claims. As set forth above, Applicants have amended withdrawn claims 25 and 30 in a manner that is identical to the amendment of claim 1. Following the amendments to the claims made herein, the withdrawn claims are limited to subject matter that the Examiner has acknowledged is not obvious in view of the combination of Lough *et al.* and Ainley *et al.* Early notice to this effect is solicited.

CONCLUSION

In view of the above amendments and remarks, Applicants submit that the rejections of the claims under 35 U.S.C. §§ 103(a) and 112, second paragraph, are overcome. Applicants respectfully submit that this application is now in condition for allowance. Early notice to this effect is solicited.

Appl. No.: 10/586,998
Amdt. dated September 30, 2009
Reply to Office Action of April 30, 2009

If in the opinion of the Examiner a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefor (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

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